

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 09 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

V.

RHONDA CAUFIELD,

Defendant - Appellant.

No. 05-30046

D.C. No. CR-03-00152-RFC

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Montana
Richard F. Cebull, District Judge, Presiding

Argued and Submitted October 18, 2005
Seattle, Washington

Before: CUDAHY^{**}, T.G. NELSON, and McKEOWN, Circuit Judges.

Rhonda Caufield was sentenced to one month in prison, one year of supervised release, and a \$2,500 fine for possessing 7.4 grams of marijuana in violation of 21 U.S.C. § 844(a). Section 844(a) includes a sentence enhancement

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

^{**} The Honorable Richard D. Cudahy, Senior United States Circuit Judge for the Seventh Circuit, sitting by designation.

provision whereby the sentence can be increased from a maximum of one year in prison and a \$1,000 fine to a maximum of two years in prison and a \$2,500 fine, if the defendant has “a prior conviction for any drug, narcotic, or chemical offense chargeable under the law of any State, [that] has become final.” 21 U.S.C.

§ 844(a). Caufield’s sentence was enhanced under this provision based on a 1998 Montana state drug offense for which she had received a deferred sentence. On appeal, Caufield argues that the 1998 offense is not a “conviction . . . [that] has become final” within the meaning of § 844(a).

The question of whether a deferred or expunged sentence is a final conviction under § 844(a) is a question of federal law, not state law. United States v. Dickerson, 460 U.S. 103, 119 (1984). As a matter of federal law, we have previously recognized that a defendant may not enjoy the benefits of an expungement statute until the sentence is actually expunged. United States v. Varela, 993 F.2d 686, 694 (9th Cir. 1993). Caufield’s sentence remains a final conviction within the meaning of § 844(a).

AFFIRMED.